

Quarterly Report
of the
ATTORNEY GENERAL
of
ALABAMA



For The Period
From October 1, 1958
Through December 31, 1958

VOLUME 93

JOHN PATTERSON, Attorney General



1959

QUARTERLY REPORT
of the
ATTORNEY GENERAL
of
ALABAMA
For the Period
October 1, 1958
Through December 31, 1958
Volume No. 93

TO THE STATE, COUNTY, AND MUNICIPAL OFFICERS OF ALABAMA:

This Quarterly Report of the Attorney General of Alabama, which includes all official opinions rendered by the Attorney General from October 1, 1958, through December 30, 1958, is published in compliance with the provisions of Title 55, Section 288, Code of Alabama, 1940.

Under this section of the Code, I am required to send seven copies of this Quarterly Report to each judge of probate in the State and the judge of probate, in turn, is required to deliver one copy each to the clerk of the circuit court, the sheriff, the tax collector, the tax assessor, the county superintendent of education, and the deputy county solicitor of his county. This section also requires that I send a copy of this report to each circuit solicitor and the chief executive officer of each incorporated municipality in the State.

The office of the Attorney General is anxious to render prompt and efficient service to the State, county, and municipal officials. If you have any suggestions to make regarding the improvement of the service, I shall be glad to hear from you.

Sincerely,

JOHN PATTERSON,
Attorney General

JOHN PATTERSON
Attorney General

Joseph G. Robertson
Confidential Assistant

Assistant Attorneys General

James L. Screws
Senior Assistant
Robert P. Bradley
Owen Bridges
David W. Clark
Jerry L. Coe
Paul T. Gish, Jr.
Gordon Madison
William N. McQueen
George D. Mentz
Joseph D. Phelps
John F. Proctor
Edmond L. Rinehart
Bernard F. Sykes
William C. Younger

Assistant Attorney General Assigned to the Department of
Agriculture and Industries
George O. Miller, Jr.

Assistant Attorney General Assigned to the Department of
Conservation:
A. J. Harris
William G. O'Rear

Assistant Attorney General Assigned to the Department of
Examiners and Public Accounts:
James T. Hardin

Assistant Attorney General Assigned to the Department of
Finance:
Randolph G. Lurie

Assistant Attorney General Assigned to the Department of
Welfare:
Alvin T. Prestwood

Assistant Attorney General Assigned to the Department of
Revenue:
Willard W. Livingston
H. Grady Tiller
William H. Burton, Jr.
James R. Payne
B. Frank Loeb

OPINIONS

October 3, 1958

Hon. Arthur Joe Grant

Commissioner of Revenue

State of Alabama

Montgomery 2, Alabama

Taxation—Exemptions—Revenue, Department of.

Commissioner of Revenue has the authority, under Title 51, Section 6, as amended, Code of Alabama 1940, to exempt from ad valorem tax for State purposes a building already constructed which is purchased by a new industry in which its plants, works, and machinery will be located.

Opinion by Assistant Attorney General Livingston.

Dear Sir:

Your request for an official opinion bearing date of September 10, 1958, is as follows:

"Your official opinion is requested concerning the following questions:

"A new industry proposes to locate in the State of Alabama. Instead of constructing a new building, it plans to purchase a suitable building already constructed and on which a lien for ad valorem tax has already attached in which its plant, works, and machinery will be located.

"1. Does the Commissioner of Revenue have the authority under Title 51, Section 6, as amended, Code of Alabama 1940, to exempt such building from ad valorem tax for State purposes?

"2. Is your answer the same where a lien for ad valorem tax has not yet attached to such building?"

There appears to be no court decisions or former opinions of this office dealing with the questions presented in your inquiry. The answer to these questions will, therefore, depend entirely on an interpretation of the legislative intent with respect to the provision of law found in Title 51, Sections 6 through 9, as amended, Code of Alabama 1940.

Section 6, *supra*, provides, in part, as follows:

"§ 6. EXEMPTION OF OTHER FACTORIES, INDUSTRIES AND PLANTS FROM AD VALOREM TAXES.—For the purpose of developing a market for Alabama pine and other trees and the products thereof, and of encouraging the construction, extension and operation

of plants, industries and factories in the state of Alabama . . . and for the manufacture, production or processing of any trade or commercial articles, materials or supplies whether or not such articles, materials or supplies are specifically named herein; . . . the department of revenue is hereby authorized and empowered to exempt from all ad valorem taxes for state purposes, and to remit any and all such taxes which are, or may be, assessed thereon, each such plant, industry and factory, and extension thereof or additions thereto, including the works, machinery and all other equipment constituting a part of, or used in connection with, any such plant, industry or factory, or extension thereof or addition thereto, for a period of not exceeding ten years from the date of completion of such plant, industry or factory, or extensions thereof, or additions thereto, but in no event the land on which such plant or factory shall be located”

It is obvious that the real object and purpose of the above statute and the intent of the lawmakers were to attract new industries to the State of Alabama by authorizing the Commissioner of Revenue to grant exemptions to qualified industries from ad valorem tax for State purposes for a period up to ten years from the date of completion of such plant, industry or factory. An increase in the industrial development of this State naturally is a boost to the economy and is beneficial either directly or indirectly to the people and to the State as a whole.

It seems illogical and unreasonable to say that if a new industry constructs a building for its plant or factory, it is eligible for the exemption authorized in Section 6, *supra*, on such building but that if the same industry finds a suitable building already constructed and purchases same in which to house its plant or factory, it is not eligible for such exemption on the building purchased. It is a new plant, industry or factory nonetheless even though the building is purchased rather than constructed and the predominate purpose of the exemption statute is to attract new industry to this State and not merely to encourage the construction of new buildings in which to house such an industry. An empty building standing alone is not a plant, industry or factory, 32A *Words and Phrases*, pp. 216-227, and when such a building is purchased and the plants, works, machinery or equipment of the new industry is installed therein, such, in my opinion, constitutes the construction of a new plant, industry, or factory within the meaning of Section 6, *supra*. It is, of course, a matter of conjecture, but no doubt many modifications to the existing building will invariably be necessary.

While it is true that exemption statutes are to be strictly construed against the claimant thereof and in favor of the taxing authority, it is also true that a literal interpretation should not be adopted when it would defeat the purpose of a statute, if any other reasonable construction can be given. *Touart v. American Cyanamid Co.*, 250 Ala. 551, 35 So. 2d 484.

Considering the over-all purpose in the enactment of the exemption provisions found in Section 6, *supra*, it is my opinion that both questions

1 and 2 in your inquiry should be and are answered in the affirmative. Of course, if any ad valorem tax lien has attached to the building for the tax year or tax years prior to the effective date of the exemption, it must be satisfied by payment of the tax when due as there is no authority to exempt property or remit any tax after a lien for such tax has attached. Section 100, Constitution of Alabama 1901; *State v. Alabama Educational Foundation*, 231 Ala. 11, 163 So. 527.

Very truly yours,

JOHN PATTERSON

Attorney General

October 7, 1958

Honorable James H. Horn

Superintendent

Department of Insurance

Montgomery 4, Alabama

Insurance—Taxation.

Returned reinsurance premiums from companies not authorized to do business in Alabama cannot be deducted from amounts received to establish basis for tax calculation.

Opinion by Assistant Attorney General Clark.

Dear Sir:

Your request for an official opinion bearing date of October 2, 1958, is as follows:

"Section 812(4), Title 51, Code of Alabama 1940, as amended, is as follows:

"The term 'premiums,' as used in this article, shall include all amounts received in cash or otherwise on risks in this State as consideration for insurance contracts, less: (a) insurance premiums returned, (b) reinsurance premiums from companies authorized to do business in Alabama and subject to the premium tax provided for in this article, (c) and dividends paid, applied, or left with the company to accumulate at interest.'

"'Premiums,' as so defined, exclude reinsurance premiums from companies authorized to do business in Alabama. By inference, 'premiums' include premiums received from companies not authorized to do business in Alabama.

"A company files a tax return during a given year, including in its basis for calculation of premium tax reinsurance premiums received from companies not authorized to do business in Alabama. The succeeding year, credit is taken for returned reinsurance premiums from companies not authorized to do business in Alabama.

"Since the term 'premiums' includes all amounts received in cash or otherwise, other than specific amounts identified in (a), (b), and (c), of Section 812(4) supra, and neither reinsurance premiums from companies not authorized nor returned reinsurance premiums from companies not authorized are among the amounts so described and excluded and since Section 816, Title 51, imposes a tax on premiums received during the year ending the thirty-first of December preceding, can return reinsurance premiums from companies not authorized be deducted from amounts received to establish the basis for tax calculation?"

My answer to your inquiry is that returned reinsurance premiums from companies not authorized to do business in Alabama cannot be deducted from amounts received to establish the basis for tax calculation.

Act No. 77, Vol. 1, General and Local Acts 1955, p. 193 (Title 51, Section 812(4) Cumulative Pocket Part, Code of Alabama 1940) is as follows:

"(4) The term 'premiums,' as used in this article, shall include all amounts received in cash or otherwise on risks in this state as consideration for insurance contracts, less: (a) insurance premiums returned, (b) reinsurance premiums from companies authorized to do business in Alabama and subject to the premium tax provided for in this article, and (c) dividends paid, applied, or left with the company to accumulate an interest."

Under this definition the term "premiums" is used to denote all amounts received in cash or otherwise on risks in this State as consideration for insurance contracts less (a), (b) and (c) as set out above. Under such a definition "premiums" include reinsurance premiums received from companies not authorized to do business in Alabama.

I am unable to find any provisions of law authorizing deduction of returned reinsurance premiums from non-authorized companies in establishing the basis for tax calculation.

Very truly yours,

JOHN PATTERSON

Attorney General

October 23, 1958

Hon. Herman L. Nelson

State Highway Director

State of Alabama

Montgomery 4, Alabama

Claims - Contracts - Corporations - Highways and Highway Department.

Money due under a satisfactorily completed contract with an individual may not be withheld by the State Highway Department to offset its potential claim for breach of contract damages against a subsequently formed private corporation, of which said individual is an incorporator and officer, in the absence of a showing of fraudulent or illegal intent on his part in setting up said corporation.

Opinion by Assistant Attorney General Mentz.

Dear Sir:

Your request for an official opinion bearing date of September 26, 1958, is as follows:

"J. B. Maynard, of Alexander City, Alabama, as an individual, has a contract for Project No. S-32(2), Russell County, with the State of Alabama Highway Department which has been completed and accepted. There is a certain amount due, according to the final estimate on this project.

"The United States Fidelity and Guaranty Company, of Baltimore, Maryland, represented by Turner Insurance and Bonding Company, of Montgomery, is the surety on the above project.

"Hillabee Construction Company, Inc. have two contracts with the State of Alabama Highway Department. These projects are known as S-522(2), Shelby County, and US-USG 347(4)-A, Tallapoosa County. These two projects are bonded by the Alabama General Insurance Company, of Montgomery, Alabama, and represented by James C. Kelly, of Montgomery, Alabama, which company is now in the hands of a receiver.

"The State Highway Department through default of the contractor, Hillabee Construction Company, Inc., and the surety is completing the two projects mentioned immediately above. The Highway Department is completing the work under Section 108.13 of the State Highway Department of Alabama Standard Specifications for Highways,

Bridges and Materials, dated 1950, which specifications are a part of the contracts.

"The officials of Hillabee Construction Company, Inc., according to records of the State Highway Department, are J. B. Maynard, president Mrs. Essie Maynard, vice-president, and J. R. Wilder, secretary-treasurer.

"Since the Highway Department is completing the two projects which are in default by the Hillabee Construction Company, Inc., of which J. B. Maynard is president and since the cost of completion of the two projects for Hillabee Construction Company, Inc., may be in excess of that which would have been payable under the contract, had the project been completed by the contractor or his surety, your official opinion is requested as follows:

"1. Should final settlement be made on Project S-32(2), Russell County, before final settlement is made by the Highway Department on Projects S-522(2) Shelby and US-USG-347(4)-A Tallapoosa.

"2. If your answer to question No. 1 is in the affirmative, may the State Highway make immediate payment.

"3. If your answer to question No. 1 is in the negative, then please advise what action the Highway Department should take."

It is my opinion that your questions numbered 1 and 2 should be answered in the affirmative.

Mr. A. Reese Harvey, Office Engineer, State Highway Department, has informed me that in December, 1952, J. B. Maynard, as individual, was awarded the contract for Project S-32(2), Russell County; that work on said project was commenced on January 2, 1953, and was completed and accepted on May 12, 1954, but that, due to a dispute over the amount of liquidated damages assessed against him, J. B. Maynard did not sign the final estimate, requisite to final payment, until June 10, 1958; that J. B. Maynard has instructed the State Highway Department, in writing, to make the final warrant due on said Project S-32(2), payable to J. B. Maynard and United States Fidelity and Guaranty Company jointly, and to mail it directly to Mr. J. Y. Sitgreaves, representative of United States Fidelity and Guaranty Company, in Montgomery, Alabama; and that J. B. Maynard has furnished the State Highway Department with a signed copy of power of attorney authorizing said J. Y. Sitgreaves to endorse J. B. Maynard's name on said final warrant.

Mr. J. Y. Sitgreaves has informed me that his company financed, practically in its entirety, J. B. Maynard's operation on said Project S-32(2).

The office of the Secretary of State has informed me that Hillabee Construction Company, Inc., was incorporated on May 10, 1955, in Tallapoosa County, Alabama, by J. B. Maynard, Essie Maynard, and J. B. Thompson, for the purpose of operating a general contracting business, with \$1,000.00 of its \$2,000.00 authorized capital paid in.

Article 12. Section 236, Constitution of Alabama 1901, provides:

"Dues from private corporations shall be secured by such means as may be prescribed by law; but in no case shall any stockholder be individually liable otherwise than for the unpaid stock owned by him or her."

Title 10, Section 28, Code of Alabama 1940, stipulates:

"No stockholder shall be liable for the debts of the corporation otherwise than the unpaid stock owned by him."

It is the general doctrine, both at law and in equity that a corporation is a distinct entity, separate and apart from the individuals composing it, and is not to be affected by the personal rights and obligations of its stockholders and officers. *Martin Truck Line v. Alabama Tank Lines*, 261 Ala. 163, 73 So. 2d 756; *Warrior River Terminal Co. v. State*, 257 Ala. 208, 58 So. 2d 100; *Finley v. Kanter*, 256 Ala. 103, 53 So. 2d 347; *Toomer v. Alpha Lambda Club*, 37 Ala. App. 331, 67 So. 2d 849.

The rights and liabilities of corporations and their stockholders are essentially different. *Ex parte Fairfield-American National Bank*, 223 Ala. 252, 135 So. 447. Exemption from personal liability by stockholders is an element of corporate contracts. *Maynolia Shingle Co. v. J. Zimmer's Co.*, 3 Ala. App. 578, 58 So. 90. Where it is not shown that the right and duty of the president and principal stockholder of a private corporation to pay the corporate debt exists by general usage, that duty does not rest upon him by virtue of his office merely, if it has not been imposed or authority been conferred by the corporation. *Sampson v. Fox*, 109 Ala. 662, 19 So. 896.

By way of exception to the general rule, in an appropriate case and in the furtherance of the ends of justice, a corporation and the individual or individuals owning all its stock and assets will be treated as identical, the corporate entity being disregarded where used as a cloak or cover for fraud or illegality or to produce injustices or inequitable consequences. *First National Bank of Gadsden v. Winchester*, 119 Ala. 168, 24 So. 351; *Ledlow v. Goodyear Tire & Rubber Co. of Alabama*, 238 Ala. 35, 189 So. 78; *Forrest Hill Corp. v. Latter & Blum*, 249 Ala. 23, 29 So. 2d 298.

Applying the foregoing principles to the instant case, it seems clear that the State Highway Department should make payment in settlement

of said Project S-32(2), even before final settlement is made on Projects S-522(2), Shelby County, and US-USG-347(4)-A, Tallapoosa County. J. B. Maynard, as an individual, is separate and distinct from Hillabee Construction Company, Inc. The contract of J. B. Maynard, as an individual, was made with the State Highway Department in December, 1952, and was completed and accepted on May 12, 1954. Hillabee Construction Company, Inc., was not incorporated until May 10, 1955. The information supplied by Messrs. Harvey, Sitgreaves, and Maynard to the effect that United States Fidelity and Guaranty Company, rather than J. B. Maynard, will receive the proceeds of the final warrant issued in settlement of said Project S-32(2), precludes the idea of fraudulent or illegal intent on the part of J. B. Maynard in setting up Hillabee Construction Company, Inc., subsequent to his completion of Project S-32(2).

Therefore, any sum of money due and payable to J. B. Maynard under his contract, as an individual, with the State Highway Department, should be paid to him, or his assignee, forthwith.

Very truly yours,

JOHN PATTERSON

Attorney General

October 24, 1958

Honorable Roy D. Gist

Chairman

Board of Revenue

Jackson County

Scottsboro, Alabama

Counties - Courthouses - Funds - Jackson County.

1. When the proceeds derived from the special levy of one-fourth of one per centum provided for by the proviso to Section 215 of the Constitution of Alabama 1901 have been pledged to the retirement of outstanding indebtedness, such funds may not be used for other authorized purposes until such indebtedness is paid.

2. The proceeds of the special levy provided for the proviso to Section 215 of the Constitution of Alabama 1901 must be used exclusively for the purposes for which levied and collected.

Opinion by Assistant Attorney General Hardin.

Dear Sir:

Your request for an official opinion bearing date of September 24, 1958 is as follows: ;

"On January 1st, 1954 the Board of Revenue of Jackson County borrowed the sum of \$225,000.00 which was spent to repair and add additions to the Jackson County Courthouse and sold Court House Building Warrants in the above sum and pledged the proceeds of taxes authorized by the Constitution of Alabama 1901, Section 215 to the payment of the principle and interest thereon. There is a provision written in the warrants which made them callable on or after January 1st, 1959. There is a balance of \$185,000.00 unpaid on said warrants.

"Jackson County has now on hand a surplus of approximately \$100,000.00 in a sinking fund known as the Jackson County Courthouse Building Warrant Fund derived from the ad valorem taxes levied under Section 215 Constitution of 1901. Following is an exact copy of the tax levy as approved in the minutes of the Board of Revenue of Jackson County each year since 1954.

"COURT HOUSE BUILDING WARRANT FUND 25c per \$100.00 VALUATION"

"For the purpose of paying the principal and interest of the Courthouse Building Warrants issued and dated January 1st, 1954 and to be known as the COURT HOUSE BUILDING WARRANT FUND. This tax being levied under authority of Section 215 of Article II of the Constitution of Alabama there is hereby levied 25c on the One Hundred Dollars valuation of taxable property assessed for taxation in Jackson County for the current year 1954.

"As provided by Act 140 Regular Session of the Legislature 1951 all authority relative to the construction, maintenance and repairs of the roads and bridges in Jackson County was transferred to the State Highway Department.

"Your official opinions upon the following questions are hereby requested.

"1. Would it be a legal expenditure for the Board of Revenue to appropriate any part of the sinking fund in the Jackson County Court House Building Warrant Fund to the State Highway Department to be used for the construction maintenance and repairs of the roads and bridges in Jackson County?

"2. Would it be a legal expenditure for the Board of Revenue of Jackson County to appropriate any part of the sinking fund in the Jackson County Court House Building Warrant Fund to be used to build or construct a Jackson County Welfare Building to house the Jackson County Department of Pensions and Security?

"3. Would it be legal for the Board of Revenue of Jackson County to borrow money by issuing warrants or bonds to be used to build or construct a Jackson County Welfare Building to house the Jackson County Department of Pensions and Security, and pledge a part of the proceeds of the revenue derived from the 2½ mills levied under Section 215 Constitution 1901 to be used for the payment of the principal and interest of the warrants or bonds issued for this purpose?"

My answer to your inquiries must, of necessity, be conditioned upon my understanding of your request and the facts stated therein. In such request, you make reference on several occasions to the Constitution of Alabama 1901, Section 215, without further specification as to the portion of such constitutional provision you have in mind. As you are perhaps well aware, Section 215, *supra*, makes reference to two levies of county taxes, the first being a general levy of one-half of one per centum for general purposes, whereas the proviso to said section has application to a special county tax for specific purposes and is not to exceed one-fourth of one per centum. It is my interpretation of your request, and my answers thereto are conditioned upon my understanding, that you refer to the proviso to Section 215, *supra*, which provides for the levy of one-fourth of one per centum as a special county tax.

I also note in your request that you state that on January 1, 1954, the Board of Revenue of Jackson County, borrowed the sum of \$225,000.00 which was spent to repair and add additions to the Jackson County Courthouse and sold Courthouse Building Warrants in the above sum, and pledged the proceeds of taxes authorized by the Constitution of Alabama 1901, Section 215, to the payment of the principal and interest thereon. You do not indicate to what extent these proceeds were pledged, consequently, for the purpose of giving answer to this inquiry, I must assume that such proceeds were pledged in their entirety toward the retirement of this indebtedness. I felt it well to call these two matters to your attention at the outset of this opinion so that you might understand the basis of my reasoning concerning same.

The proviso to Section 215, *supra*, which I have mentioned, is as follows:

" . . . provided, further, that to pay any debt or liability now existing against any county, incurred for the erection, construction, or maintenance of the necessary public buildings or bridges, or that may hereafter be created for the erection of necessary public buildings,

bridges, or roads, (a) any county may levy and collect such special taxes, not to exceed one-fourth of one per centum, as may have been or may hereafter be authorized by law, which taxes so levied and collected shall be applied exclusively to the purposes for which the same were so levied and collected."

The above proviso has been construed as a twofold limitation upon the power of the counties to levy taxes. As you will note, the levy provided for by this proviso is limited; first, as to amount, and secondly, as to the purposes for which the proceeds of same may be utilized. Enabling legislation authorizing the levy mentioned above is to be found in Title 12, Section 186, Code of Alabama 1940, which statute authorizes the county governing bodies to levy in conformity with the above constitutional proviso.

Considering the above authorities for such levy, together with the specific levy itself as set out in your inquiry, leads me to the conclusion that it would not be proper for the Board of Revenue to appropriate any part of the monies contained in the Jackson County Courthouse Building Warrant Fund to the State Highway Department to be used for the construction, maintenance and repair of roads and bridges in Jackson County. Occasion for such inquiry arises due to the fact that by Act No. 140, General and Local Acts 1951, page 371, authority relative to the construction, maintenance, and repair of the roads and bridges of Jackson County was transferred from the county governing body to the State Highway Department. Under the terms of such act, those funds formerly accruing to the county for road and bridge purposes now accrue to the credit of the State Highway Department to be used in and about the construction, repair and maintenance of roads and bridges in Jackson County.

I base my answer to your first inquiry upon the fact that you advise that the proceeds of the special levy made pursuant to Section 215 of the Constitution, supra, and Title 12, Section 186, supra, have been pledged toward the retirement of those warrants issued January 1, 1954, which warrants were sold to provide money for the repair and additions to the Jackson County Courthouse. The statement of facts contained in your inquiry is to this effect and it appears to me that the levy made by the county governing body of this special tax contemplates that the proceeds of same be used solely for the payment of principal and interest of the Courthouse Building Warrants issued under date of January 1, 1954. Reference in such levy to the Courthouse Building Warrant Fund leads me to the conclusion that it was contemplated that those revenues not currently needed for the payment of principal and interest on these warrants be deposited in a special sinking fund to be later utilized for such purpose. This being the case, the requirement of the proviso of Section 215, supra, to the effect that taxes collected pursuant thereto be applied exclusively to the purposes for which the same were so levied and collected would have application. It, therefore, appears to me that, in the first instance, the proceeds of such levy have been pledged to the payment of

principal and interest due on the Jackson County Courthouse Building Warrants issued January 1, 1954, and may not be diverted to other purposes and, secondly, that the county governing body, in making levy of this special tax, have levied same for this purpose and, therefore, the money so derived must be applied exclusively to the purposes for which the tax was so levied. If this be the situation, then I do not think that it would be lawful to transfer a portion of the sinking fund established by virtue of such levy to the State Highway Department to be used for purposes different from that for which the tax was so levied. Neither would it be lawful to transfer such monies if same have been pledged to the retirement of the indebtedness indicated as same would constitute a breach of contract and trust with the holders of the warrants mentioned. See in this connection Quarterly Reports of Attorney General, Vol. 28, page 153, and Vol. 37, page 53.

You next inquire as to whether any portion of the sinking fund established in connection with the retirement of the Courthouse Building Warrants may be used to build or construct a county welfare building to house the County Department of Pensions and Security. My answer to this question would be the same as that to your previous inquiry. If the proceeds of the special tax with which we are here concerned have been pledged to the retirement of the warrants issued in connection with the repairs and additions to your courthouse, then I do not feel that such funds may now be diverted to other purposes. Again, it appears to me that the levy of this special tax contemplated that the same be used for the retirement of this indebtedness arising from the issuance of Courthouse Building Warrants and, consequently, the monies derived from such levy must be used exclusively for the purposes for which so levied and collected. Accordingly, I do not feel that so long as outstanding indebtedness exists as a result of the Courthouse Building Warrant issue, the funds derived from the special levy with which we are here concerned may be utilized for other purposes.

In your third inquiry, you inquire as to whether or not the county may borrow money by issuing warrants or bonds to be used in the construction of a county welfare building to house the County Department of Pensions and Security and pledge toward the retirement of such indebtedness a part of the proceeds of the revenue derived from the special levy mentioned in Section 215 of the Constitution, *supra*. This inquiry I also must answer in the negative, based upon the premise that the funds now being derived by means of this special levy are pledged to the retirement of the indebtedness incurred in connection with your Courthouse Building Warrant issue. The proviso to Section 215, *supra*, only authorizes a special levy of one-fourth of one per centum, and this full amount is now being levied for the purpose of retiring your Courthouse Building Warrant indebtedness. So long as this indebtedness remains outstanding and the revenue derived from this special levy is pledged toward its retirement, I do not feel that further pledge could be made of these same revenues without doing violence to your contractual and trust agreement with the holders of these warrants.

I call your attention also once more to the fact that I have predicated my answers herein upon the assumption that we are dealing solely with the special levy authorized by the proviso found in Section 215 of the Constitution, supra, and that under the current levy of such special tax by your county governing body, the full proceeds of same are pledged toward the retirement of the Courthouse Building Warrants issued by Jackson County on January 1, 1954. If the facts be different from this, then, perhaps, a different conclusion might be reached, but based upon this understanding, I must answer each of your inquiries in the negative.

Very truly yours,

JOHN PATTERSON

Attorney General

October 24, 1958

Honorable Ashford Todd

Judge of Probate

Madison County

Huntsville, Alabama

Madison County - Funds - Judges of Probate - Highways and Highway Department.

1. Act No. 501, General & Local Acts 1957, page 688, placing the Judge of Probate of Madison County on a salary basis of compensation, effects no change in the deposit of funds into the Public Highway and Traffic Fund of the county; and those county revenues derived from the sale of motor vehicle licenses and the issuance of driver's licenses and learner's permits shall still continue to be deposited in the Public Highway and Traffic Fund.

2. Fees formerly accruing to the Judge of Probate for services rendered in connection with the sale of motor vehicle licenses and issuance of driver's licenses and learner's permits now accrue to the county and should be deposited in

the general fund of the county.

Opinion by Assistant Attorney General Hardin.

Dear Sir:

Your request for an official opinion bearing date of October 8, 1958 is as follows:

"By Act No. 183 of the 1957 Regular Session of the Alabama Legislature, a Constitutional amendment was submitted to and adopted by the electorate of Alabama. This amendment provided in part as follows:

" 'The Legislature may from time to time, by general or local laws, fix, alter, and regulate the fees, commissions, percentages, costs, allowances, and compensation to be charged or received by the judge of probate or any other officer of Madison County, and may place such officer on a salary, and provide that the fees, commissions, percentages, costs, and allowances collected by such officer shall be paid into the county treasury from which his salary shall be paid.'

"Act No. 501 of the same Legislature provided in part that,

" 'All fees, commissions, allowances, percentages, charges, and costs heretofore collected for the use of the judge of probate of Madison County shall be collected for the use of the county and paid into the general fund of the county.'

"The 93rd amendment to the Constitution of 1901, adopted in 1952, provided in effect for the use of any fees, excises or license taxes obtained from the use of motor vehicles to be paid into the Public Highway and Traffic Fund. Please advise if the revenues derived from the sale of automobile license plates and drivers' licenses, which previously were a part of the fees to which I as Probate Judge was entitled, should, after January 19, 1959, the effective date of Act No. 501, be paid by me into the general fund of the County or into the Public Highway and Traffic Fund."

In your request you make reference to Acts No. 183 and No. 501, General & Local Acts 1957, found respectively on pages 236 and 688 thereof. The first of such acts, Act No. 183, *supra*, proposes a constitutional amendment whereby the Legislature shall be authorized from time to time to fix, alter, and regulate the fees, commissions, percentages, costs, allowances, and compensation to be charged or received by the Judge of Probate or any other officer of Madison County. Said amendment further provides that such officers may be placed on a salary, providing that the fees, commissions, percentages, costs, and allowances collected by such officers shall be paid into the County Treasury from which the salary of such officers shall be paid. This proposed amendment was submitted to the electorate of this State on December 17, 1957, and was proclaimed ratified and adopted as of December 27, 1957.

The second of such acts, Act No. 501, supra, is the enabling legislation whereby the Judge of Probate of Madison County is placed on a salary basis as distinguished from a fee system of compensation. Section 3 of Act No. 501, supra, provides that all fees, commissions, allowances, percentages, charges, and costs heretofore collected for the use of the Judge of Probate of Madison County shall be collected for the use of the county and paid into the general fund of the county. This section further provides for the compensation of the Judge of Probate and his clerical assistants from the general fund of the county in the same manner as other employees of the county are paid.

You next refer to the provision of Amendment 93, to the Constitution of Alabama 1901, which was proposed by Act No. 755, General Acts 1951, page 1305. This proposed amendment was submitted to the electorate of this State under date of November 4, 1952 and proclaimed ratified and adopted as of November 19, 1952. Under the terms of such amendment it is provided that monies derived from fees, excises or license taxes levied by the State relating to registration, operation, or use of vehicles upon the public highways, and that derived from fees, excises, or license taxes levied by the State relating to fuels used for propelling such vehicles shall be expended only for those purposes provided for in such amendment. Subsequent to the adoption of such amendment the Department of Examiners of Public Accounts required of the counties that a Public Highway and Traffic Fund be established into which certain of the revenues derived from the sources mentioned in Amendment 93, supra, be deposited. These include the revenue derived from the sale of automobile licenses, driver's licenses and learner's permits. As I understand your inquiry, you wish to know as to whether or not such revenues should now be deposited into the general fund of your county or into the Public Highway and Traffic Fund mentioned above.

In my opinion, the passage of Act. No. 501, supra, placing the office of the Judge of Probate of Morgan County on a salary basis, in nowise affected the disposition to be made of the revenues accruing to the county from the sale of motor vehicle licenses, driver's licenses or learner's permits. That portion of such revenue accruing to the county should still be deposited to the credit of the county in the Public Highway and Traffic Fund, which I have previously mentioned.

On the other hand, the passage of Act. No. 501, supra, does require that the fees, commissions, allowances, percentages, charges, and costs which heretofore accrued to the Judge of Probate of the county for services rendered by him must now be paid into the General Fund of the county. As you are aware, prior to the passage of Act No. 501, supra, you, as Judge of Probate, were entitled to certain fees, commissions or allowances for the services performed by you in connection with the sale of motor vehicle licenses and the issuance of driver's licenses and learner's permits. Prior to the effective date of Act No. 501, supra, these fees, commissions or allowances accrued to you personally as your compensation for services rendered in this respect. By virtue of the

passage of Act No. 501, supra, such fees, commissions or allowances are now to be collected for the use of the county and paid into the General Fund of the County from whence your salary as Judge of Probate is paid.

Accordingly, I advise you that no change has been effected as to the disposition of the revenue accruing to the county from the sale of motor vehicle licenses, driver's licenses and learner's permits and same should continue to be deposited into the Public Highway and Traffic Fund of the county. However, with regard to those fees associated with the sale of such motor vehicle licenses or the issuance of driver's licenses and learner's permits, which formerly accrued to the Judge of Probate as his compensation for services rendered in connection therewith, the same should now be collected and paid into the General Fund of the county.

Very truly yours,

JOHN PATTERSON

Attorney General

November 19, 1958

Honorable Guy D. Roberts

Chairman, Morgan County Board

of Revenue and Control

Decatur, Alabama

Taxation - Exemptions - Ad Valorem Taxes.

A uniform and supply company which places lettering, advertisements, or names on garments or commercial articles which it rents to its customers is not manufacturing, producing or processing trade or commercial articles, materials, or supplies within the meaning of Title 51, Section 3, as amended, Code of Alabama 1940, and is not eligible for the exemption from ad valorem tax as provided therein.

Opinion by Assistant Attorney General Livingston.

Dear Sir:

Your request for an official opinion bearing date of September 25, 1958, is as follows:

"A new uniform and towel supply company proposes to locate a

plant in Morgan County and has applied to the Board of Revenue and Control of Morgan County for ad valorem tax exemption under the provisions of Title 51, Section 3, Code of Alabama 1940, as amended, by Act No. 199, Acts of Alabama 1951, P. 460.

"The plant in question proposes to operate a rental service wherein they furnish to industries and business, work garments, cover-alls, shop coats, trousers, shirts, shop towels and fender covers. They propose to engage in the ' . . . processing of . . . supplies' in that they will, by their own process, place any lettering, advertisement, or names on any garments or commercial articles furnished to their customers. They will also mend, repair, and launder said commercial articles and supplies.

"Your official opinion is respectfully requested as to whether the Board of Revenue and Control of Morgan County, Alabama, may grant an exemption from ad valorem taxes for a period not to exceed ten years to this type of industry under the provisions of Title 51, Section 3, Code of Alabama 1940, as amended, *supra*."

Title 51, Section 3, as amended, Code of Alabama 1940, provides, in part as follows,

"Exemption of certain factories, industries and plants. — For the purpose of encouraging the building, extending and operation of plants, industries and factories in this state for, . . . the manufacture of garments and wearing apparel; . . . and for the manufacture, production or processing of any trade or commercial articles, materials, or supplies whether or not such articles, materials or supplies are specifically named herein; . . . the court of county commissioners, or other court or board having like jurisdiction of any county, . . . are authorized and empowered to remit the taxes assessed for all county . . . purposes, . . . on such plants, industries or factories . . ." (Emphasis supplied.)

Laws granting tax exemptions are not so favorably regarded as to justify an interpretation that would extend their meaning by mere implication. Tax exemptions like other cases of special privileges are to be strictly construed. *State v. Praetorians*, 266 Ala. 259, 147 So. 411; *Title Guarantee and Loan and Trust Company v. Hamilton*, 238 Ala. 602, 193 So. 107; and *State v. Bay Towing and Dredging Company, Inc.*, 264 Ala. 187, 85 So. 2d 890.

From the facts in your inquiry, it appears clear that the supply company is not manufacturing garments or commercial articles and, therefore, does not satisfy the first underscored portion of Section 3, *supra*, nor do the activities of the company constitute the manufacture or production of any trade or commercial articles, materials, or supplies as set out in the second underscored portion of Section 3. The answer to your question

depends upon the interpretation to be placed on the meaning of the term "processing" as used in the above statute.

There are numerous decisions of various courts dealing with the term "processing", but none directly in point with the question here. See 34 Words and Phrases, pages 261-274. However, in the case of *In re Supreme Lingerie Co., Inc.*, 90 Fed. Supp. 456, it was held that a company which sewed ladies slips from cut pieces supplied by another company was not a "processor".

The business which the supply company proposes to engage in consist primarily of operating a rental, together with a mending, repairing and laundering service, and the mere placing of any lettering, advertisements or customer's names on the articles or commodities rented could not be considered, in my opinion, as the "processing of any trade or commercial articles, materials or supplies" with the meaning of Section 3, *supra*. Obviously, the placing of the lettering, names or advertisements on the garments or articles mentioned is merely an inducement by the supply company to attract business from its prospective clients or customers. The articles rented are already manufactured, produced or processed, and are marketable products without the addition of any extra labeling with names or advertisements.

It is my opinion that the activities of the supply company, as stated in your inquiry, do not constitute, "... the manufacture, production or processing of any trade or commercial articles, materials, or supplies. . . ." within the meaning of Section 3, *supra*. Therefore, the Board of Revenue and Control of Morgan County does not, in my judgment, have authority to grant an exemption from ad valorem tax to the supply company under the provisions of Title 51, Section 3, as amended, Code of Alabama 1940.

Very truly yours,

JOHN PATTERSON

Attorney General

November 20, 1958

Honorable Bill Lyerly

Director

Department of Public Safety

C A P I T O L

Public Safety Department - Highway Patrol - Driver's License.

1. The Director of Public Safety is authorized by Title 36, Section 70, Code of Alabama 1940, as amended by Act. No. 894, General and Local Acts 1951, page 1534, to add an additional revocation period of up to six months to the original revocation period of any person convicted of the offense of driving a motor vehicle while his or her driver license is cancelled, suspended or revoked.

2. A conviction of any traffic offense contained in Title 36, Code of Alabama 1940, other than the offense of "driving while cancelled, suspended or revoked" would not authorize the assessment of the additional revocation time provided for in Title 36, Section 70, Code of Alabama 1940, as amended by Act No. 894, General and Local Acts 1951, page 1534.

Opinion by Assistant Attorney General Bradley.

Dear Sir:

Your request for an official opinion bearing date of September 17, 1958, is as follows:

"I would like to request an official opinion as applies to Section 70, Title 36, of the 1940 Code of Alabama as amended and which has to do with the penalty for violation by person whose driver license or driving privilege has been canceled, suspended or revoked. My question is — Must the report read: **DRIVING WHILE REVOKED** or **DRIVING WHILE SUSPENDED** in order for the Director to revoke for an additional period of six months; or is the fact that a person is convicted of No Driver License, Reckless Driving, or any other moving violation while he is under revocation prima facie evidence that he was driving under revocation, thereby permitting the Director to place an additional period of revocation upon his driving privilege." Title 36, Section 70, Code of Alabama 1940, as amended by Act No. 894, General and Local Acts 1951, page 1534, provides as follows:

"Any person whose driver's or chauffeur's license issued in this or another state, or whose driving privilege as a non-resident, has been

cancelled, suspended or revoked as provided in this article and who drives any motor vehicle upon the highways of this state while such license or privilege is cancelled, suspended, or revoked, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than twenty-five dollars, nor more than five hundred dollars, and in addition thereto may be imprisoned for not more than thirty days. Also at the discretion of the director of public safety such person's license may be revoked for an additional revocation period of six months."

Please note that the person who drives a motor vehicle on the highways of the State of Alabama, while such license is under suspension, revocation or cancellation, shall be, upon conviction, guilty of a misdemeanor and fined, or in addition thereto, may be imprisoned in the county jail for not more than thirty (30) days; and further that the person convicted of the offense of driving while his license is suspended, revoked or cancelled may also have an additional revocation period added to the original cancellation, suspension or revocation period of not to exceed six (6) months, at the discretion of the Director of Public Safety. Therefore, it is my opinion that a person must be charged with and convicted of driving a motor vehicle while his license is suspended, revoked or cancelled to authorize the Director of Public Safety to add additional revocation time.

It is my further opinion that no other charge, other than that enumerated above, would authorize the Director of Public Safety to add additional revocation time as provided in Section 70, supra.

Very truly yours,

JOHN PATTERSON

Attorney General

November 21, 1958

Honorable Arthur Joe Grant

Commissioner of Revenue

State of Alabama

Montgomery, Alabama

Taxation - Revenue, Department of - Motor Carriers - Mileage.

1. The words "certificate or permit" as used in Section 2A(3) of the Motor Carrier Act of 1939 refer only to a certificate of public convenience and necessity, which is issued by the

Alabama Public Service Commission to a common carrier, or to a permit, which is issued by said Commission to a contract carrier.

2. The words "certificate or permit" as used in Section 2A(3) of the Motor Carrier Act of 1939 do not include a "certificate of registration" which is issued to an interstate carrier when it registers its interstate authority with the Alabama Public Service Commission.

Opinion by Assistant Attorney General Younger.

Dear Sir:

Your request for an official opinion bearing date of October 27, 1958, is as follows:

"Your official opinion is requested covering the following situation which has arisen under the Alabama Mileage Tax Act of 1939 and which also involves parts of the Alabama Motor Carrier Act of 1939.

"The situation referred to involves a motor carrier whose domicile and place of incorporation is in the State of Georgia but which has its principal place of business in Guntersville, Marshall County, Alabama. This carrier hauls exclusively coal from Guntersville, Alabama, to the Georgia Steam plant, which is located 6.2 miles within the State of Georgia and over the Alabama line. The coal involved is shipped by barge to Guntersville where the carrier loads it to make the trip to Georgia.

"This carrier does not have intrastate rights with the Alabama Public Service Commission to haul between points in the State of Alabama. It has only the right to haul coal in interstate commerce from Alabama to Georgia and has a permit in this respect granted to it by the Federal Interstate Commerce Commission.

"Under the provisions of Section 2 of the Alabama Mileage Tax Act of 1939 (Section 301 (34) of Title 48, Pocket Part to 1940 Code), it is provided that the Alabama mileage tax is to apply to all motor carriers which are subject to the provisions of the Alabama Motor Carrier Act of 1939 (Sections 301 (1), et seq., Title 48, Pocket Part to 1940 Code). The two Acts, therefore, are at least to this extent related.

"Under the provisions of Section 2A(3) of the Motor Carrier Act (Section 301(2) A (3), Title 48, Pocket Part to 1940 Code), motor carriers which haul coal exclusively are exempt from regulation by the Alabama Public Service Commission.

"However, Section 2A(3) of the Motor Carrier Act provides further,

in pertinent part, as follows:

“ . . . except that this subsection shall not be construed to exempt from the provisions of the Mileage Tax Act, as amended, sections 301 (33) - 301(51) of this title, any motor carrier who operates under certificate or permit granted under the authority of the Alabama public service commission.” (Emphasis Supplied)

“Thus, it is provided that motor carriers who have a certificate or a permit granted under the authority of the Alabama Public Service Commission are not exempt from the mileage tax, even though they are hauling exclusively coal or other exempt commodities described in Section 2A(3) of the Alabama Motor Carrier Act.

“The Motor Carrier Act since its enactment and approval in 1940 has been construed to require all motor carriers who travel in interstate commerce in Alabama, and who hold a permit from the Federal Interstate Commerce Commission, to file a copy of such permit with the Alabama Public Service Commission and show proof of required insurance, and such interstate carriers to be covered by and subject to the Motor Carrier Act to that extent. When this is done, then the Alabama Public Service Commission in turn issues such an interstate carrier a certificate of registration showing that such carrier has registered its Interstate Commerce Commission permit and has met the insurance requirements.

“Said certificate of registration differs from the permits which the Alabama Public Service Commission issues under Section 11 of the Alabama Motor Carrier Act (Section 301(11), Title 48, Pocket Part to 1940 Code) to contract carriers, or the certificate of public convenience and necessity which it issues to a common carrier under Section 8 of the Alabama Motor Carrier Act (Section 301(8), Title 48, Pocket Part 1940 Code), as the certificate of registration issued to the interstate carrier as aforesaid does not grant any authority to haul in intrastate commerce in Alabama.

“Section 1K (Title 48, Section 301 (1)K), of the Motor Carrier Act defines a ‘certificate’ for the purpose of the Act as follows:

“ ‘K. The term “certificate” means a certificate of public convenience and necessity issued under this article to common carriers by motor vehicle.’

“Moreover, Section 1L (Title 48, Section 301(1)L) of the same Act defines a ‘permit’ for the purpose of the Act as follows:

“ ‘L. The term “permit” means a permit issued under this article to contract carriers by motor vehicle.’

"With this background, I request your official opinion, as follows:

"Is the certificate of registration above described a 'certificate' or a 'permit' as is referred to under the provisions of Section 2A(3) of the Alabama Motor Carrier Act in providing that one holding a 'certificate' or a 'permit' granted under the authority of the Alabama Public Service Commission would not be entitled to exemption from mileage taxes in hauling the commodities listed as exempt therein, or do the words 'certificate' or 'permit', as so used in said Section relate only to a certificate of public convenience and necessity or a permit issued to a contract carrier by the Alabama Public Service Commission to haul in intrastate commerce in Alabama?"

Your question, as I understand it, is whether a certificate of registration issued by the Alabama Public Service Commission to an interstate motor carrier, who hauls coal exclusively, is such a "certificate or permit" as is referred to in Section 2A(3) of the Motor Carrier Act of 1939 (Title 48, Section 301(2) A(3), Alabama Code 1940, (1955 Cum. Supp.)), thereby making the holder of such a certificate of registration subject to the Mileage Tax Act (Title 48, Sections 301 (33) - 301(51), Alabama Code 1940 (1955 Cum. Supp.)). My answer to this question is in the negative.

Section 3 of the Motor Carrier Act (Title 48, Section 301(3), Alabama Code 1940 (1955 Cum. Supp.)) provides that all motor carriers as defined in said Act are subject to the Motor Carrier Act except those specifically exempt.

Section 2A(3) of the Motor Carrier Act (Title 48, Section 301(2) A(3), Alabama Code 1940 (1955 Cum. Supp.)) exempts, among others, motor vehicles hauling coal exclusively except "any motor carrier who operates under a certificate or permit granted under the authority of the Alabama Public Service Commission." Thus, a motor carrier who hauls coal exclusively is not subject to the Motor Carrier Act under the specific terms of Section 301(2) A(3), *supra*, unless said motor carrier is operating under authority of a certificate or permit granted by the Alabama Public Service Commission. The question then arises as to whether a certificate of registration issued by the Alabama Public Service Commission to an interstate motor carrier is a "certificate or permit" within the meaning of said terms as used in Section 2A(3) of the Motor Carrier Act. For an answer to that question we must analyze these three terms.

Section 1K of the Motor Carrier Act (Title 48, Section 301(1)K, Alabama Code 1940 (1955 Cum. Supp.)) defines a "certificate" for the purpose of the Act as follows:

"The term 'certificate' means a certificate of public convenience and necessity issued under this article to a common carrier by motor vehicle."

A certificate of public convenience and necessity is issued to a qualified

common carrier after a public hearing on its application and a finding by the Alabama Public Service Commission that the applicant is fit, willing and able to perform the proposed service and that the proposed service is or will be required by the present or future public convenience and necessity. — Section 9, Alabama Motor Carrier Act.

Section 9B of the Motor Carrier Act provides, that before granting a certificate to a common carrier by motor vehicle, the Commission shall, among other things, consider:

“(1) Whether existing transportation service of all kinds is adequate to meet the reasonable public needs. (2) Financial ability of the applicant to furnish adequate, continuous and uninterrupted service the year around. (3) The advantages to the public of the proposed service.”

Section 1L of the Motor Carrier Act defines a “permit” for the purpose of the Act as follows:

“The term ‘permit’ means a permit issued under this article to contract carriers by motor vehicle.”

Under the provisions of Section 1L of the Motor Carrier Act a permit is issued to a contract carrier, if, after public hearing of the application it appears from the evidence that the applicant is fit, willing and able to properly perform the service and that the proposed operation will be consistent with the public interest.

For the purpose of this discussion the only material difference between a “certificate” and a “permit,” as these terms are used in the Motor Carrier Act, is that a “certificate” is issued to a common carrier and a “permit” is issued to a contract carrier. Both a “certificate” and a “permit” grants operating authority to its holder and is issued only after a public hearing at which the required evidence is offered.

That brings us to a discussion of the term “certificate of registration” which is issued by the Alabama Public Service Commission to an interstate carrier which presents its interstate authority to the Commission along with evidence of the required insurance. The issuance of such a certificate does not require a public hearing and proof of public convenience and necessity; nor does such a certificate grant to its holder any operating authority whatsoever. Said certificate merely shows that the interstate carrier has registered its Federal Interstate Commerce Commission’s permit with the Alabama Public Service Commission. Registering its Federal authority with the Commission is not equivalent to being granted operating authority in the form of a “certificate or permit,” therefore, a “certificate of registration” is not a “certificate or permit”

as these terms are used in Section 2A(3) of the Motor Carrier Act.

Premises considered, it is my opinion that the words "certificate or permit" as used in Section 2A(3) of the Motor Carrier Act refer only to a certificate of public convenience and necessity which is issued to a common carrier or a permit which is issued to a contract carrier and that a "certificate or permit" does not include a certificate of registration which is issued to an interstate carrier who merely registers its Federal authority with the Alabama Public Service Commission. This conclusion is arrived at from a plain reading of the Acts involved, which are not ambiguous. It is a well settled principle of law that where the wording of statutes are clear and unambiguous said statutes need no construction.

It necessarily follows from the foregoing that the interstate carrier referred to by you in your letter is exempt from the Motor Carrier Act which prevents said carrier from being subject to the Mileage Tax Act.

Very truly yours,

JOHN PATTERSON

Attorney General

November 24, 1958

Hon. James F. Berry

Major General

The Adjutant General

Vice-Chairman, The Armory

Commission of Alabama

C A P I T O L

Armory Commission - Municipalities - Assessments.

The Armory Commission may pay municipal improvement assessments against its property if the assessments are in proportion to the increased value of the property.

Opinion by Assistant Attorney General McQueen.

Dear Sir:

Your request for an official opinion, bearing date of October 28, 1958,

is as follows:

"The Armory Commission of Alabama owns several parcels of property that abuts busy, unpaved thoroughfares in the cities of Enterprise and Opelika, Alabama. Both of these municipalities desire to pave these thoroughfares at this time. No question arises as to whether the value of the Armory Commission property will be enhanced as such is needed very badly and will improve the value and appearance of the Armory Commission property. Although the members of these City Commissions are well aware of the law that prohibits State or Government property from being assessed, they query the Vice-Chairman of the Armory Commission as to whether or not The Armory Commission will pay its pro-rata share of these projects over a period of ten years.

"Therefore, it is respectfully requested that you render a legal opinion as to whether or not The Armory Commission can enter into an agreement with a municipality whereby it will consent to an assessment of Armory Commission owned property. Further, that if such an agreement be legal and permissible, whether or not such assessment can be paid by cash or a tenth of the total cost per year for ten years.

"Since these municipalities are very anxious to pursue these projects immediately, it is humbly requested that you render an opinion as soon as practicable."

My answer to your inquiry is in the affirmative.

I deem it advisable to point out that Section 91, Constitution of Alabama 1901, exempts from taxation the property of the state, counties and municipal corporations. It necessarily follows from the provisions of Section 9 of the Constitution, that there can be no tax placed on State property. This provision of the Constitution does not, however, prohibit a local assessment for public improvements such as pavement, sewerage, etc. when the legislative intent is clear that State property is to be so taxed. There is a well defined distinction between general taxation and a local assessment for public improvements such as pavement.

This office has heretofore held that property owned by the State, even though same is not subject to a special municipal assessment, does not preclude the State, if it so desires, from voluntarily contributing to the cost of municipal improvements. Quarterly Report of Attorney General, Vol 77, page 49.

In Quarterly Report of Attorney General, Vol. 65, page 33, the following language in this regard is used:

"Your second question must be answered in the affirmative. In

Quarterly Report of Attorney General, Vol. 54, page 51, it was held that lack of authority in a municipality to levy such special assessment against property owned by the State of Alabama did not, however, preclude the state, if it so desired, from voluntarily contributing to the cost of such public improvements, provided the contribution is based upon the increased value of the property by reason of the special benefits derived from such improvements. See also *Town of Eutaw v. Coleman*, 189 Ala. 164, 66 So. 464. Thus, if it is the will of the Board of Trustees, and the assessment is in proportion to the increased value of the property, the treasurer of said board may legally pay such assessments."

It, therefore, follows that the Armory Commission may voluntarily enter into an agreement with the City of Enterprise and Opelika to pay its pro rata share of the cost of the improvement, provided the voluntary assessments are in proportion to the increased value of the property.

In regard to your inquiry as to whether or not such assessment can be paid in cash or a tenth of the total cost paid per year for a period of ten years is a matter which addresses itself to the Armory Commission. Either method would be entirely legal.

Very truly yours,

JOHN PATTERSON

Attorney General

November 25, 1958

Hon. Roy D. Gist

Chairman

Board of Revenue

Jackson County

Scottsboro, Alabama

Counties - Jackson County.

1. Jackson County may agree to maintain the channel of the Paint Rock River after it has been straightened and cleared by the Corps of Engineers of the United States Army in order to prevent said river from overflowing and damaging the crops of said county.

2. Jackson County may expend any of its funds not earmarked

for other purposes to maintain the channel of the Paint Rock River.

Opinion by Assistant Attorney General Gish.

Dear Mr. Gist,

Your request for an opinion bearing date of November 10, 1958, is as follows:

"The Corps of Engineers of the U. S. Army proposes to expend approximately \$750,000.00 for the purpose of straightening and clearing the channel of the Paint Rock River which flows through Jackson, Madison and Marshall Counties provided the counties involved will agree to maintain the channel after it is completed.

"As you doubtless know, the bottom land along the Paint Rock River is some of the best farm land in this area but because the river bank has become overgrown with trees and brush and because the channel has become obstructed with sand bars, drifts and debris, the river is subject to frequent overflow. This flooding of the farms along the river results in a loss of many thousands of dollars in farm revenue. The valley farmers estimate that they will lose approximately one crop out of every three due to flood damage.

"According to Soil Conservation experts, the principal maintenance requirements of such a project would consist of the periodic cutting and removal of brush and weeds along the channel bank.

"Jackson County is most anxious to have this work done by the Corps of Engineers and is willing to agree to maintain the channel after completion if it may legally do so.

"We, therefore, respectfully request your opinion on the following question: Can Jackson County lawfully agree to maintain the channel of the Paint Rock River after that channel have been straightened and cleared by the Engineers and would any sums expended in this behalf be proper charges against County funds under Title 12, §12 subsection 22 of the Code of Alabama, 1940 or under any other theory?"

Title 12, Section 12(22), Code of Alabama 1940, as last amended by Act. No. 750, General and Local Acts 1957, p. 1184, reads as follows:

"To set aside, appropriate and use county funds or revenues for the purpose of developing, advertising and promoting the agricultural mineral, timber, water, labor, and all other resources of every kind of their respective counties, and for the purpose of locating and

promoting agricultural, industrial, and manufacturing plants, factories and other industries in their respective counties. The court is authorized to enter into contracts with any person, firm, corporation or association to carry out the purpose set forth in this subdivision."

It will be noted that the above quoted portion of Section 12, as amended, supra, authorizes the appropriation, and expenditure of county funds by the governing body of a county for the purpose of developing and promoting the agricultural resources within the county. Since your request states that the Paint Rock River frequently overflows and damages the crops of Jackson County, I am of the opinion that Jackson County may maintain the channel of said river in order to prevent damage to the crops in said county. Cf. the opinions reported in Biennial Report of Attorney General 1934-36, pp. 46 and 201, and the opinion reported in Quarterly Report of Attorney General, Vol. 17, p. 247.

Premises considered, I am of the opinion that Jackson County may agree to maintain the channel of the Paint Rock River after said channel has been straightened and cleared by the Corps of Engineers of the United States Army. I am further of the opinion that Jackson County may expend for this purpose any of its funds which are not earmarked for other purposes.

Very truly yours,

JOHN PATTERSON

Attorney General

November 25, 1958

Honorable M. D. Tingle

Judge of Probate

Chilton County

Clanton, Alabama

Bail - Bonds - Sureties

A license to engage in the business of making bonds may be issued to an individual applying therefor and paying the license fee, but before the surety is approved as to his qualifications on a bail bond, he must furnish bond with a corporate surety in the amount of ten thousand dollars, as provided for in Act No. 199, General and Local Acts 1949, page 230 (Title 15, Section 201, Cumulative Pocket, Part Code of Ala-

bama 1940) and cash bond or individual bond may not be substituted therefor.

Opinion by Assistant Attorney General Clark.

Dear Sir:

Your request for an official opinion bearing date of November 3, 1958 is as follows:

"It would be appreciated if you would give me an opinion as to Title 15, Section 201 of the Code as to the following questions.

"1. Whether it is mandatory that a bond with a corporate surety is necessary before issuing a Bondsman License as a individual?

"2. If an individual cannot get a corporate surety, would a cash bond or individual bond be sufficient under this section?

"Since the last day for obtaining licenses has expired and I have three (3) applicants it would be appreciated if you would give me an early answer."

The questions asked involve Title 51, Section 477, Code of Alabama 1940 which is as follows:

"Each person engaged in the business of making bonds and charging for the same, except guaranty companies or corporations otherwise specifically licensed, one hundred dollars per annum. The payment of the license required by this schedule shall authorize the doing of business only in the town, city or county where paid. And that no person engaged in the business of making bonds and charging for the same shall be exempt from paying said license."

The above Code section makes no mention of necessity of furnishing bond with a corporate surety as a prerequisite to obtaining a bondsman license as an individual.

Act No. 199, General and Local Acts of 1949, page 230 (Title 15, Section 201, 1955 Cumulative Pocket Part, Code of Alabama 1940) provides as follows:

"The qualifications of bail are, that each must be a resident of this state, and a householder and freeholder therein, and that each must be worth, exclusive of property exempt from execution, the amount expressed in the undertaking, provided however that each person, engaged in the business of making bonds and charging therefor, except corporations qualified to do a bonding business in this state, shall,

in addition to all other requirements of this section, be required as a part of the qualifications of bail to furnish bond with a corporate surety authorized to act as surety on bonds in this state in the amount of ten thousand dollars to be approved by the probate judge of the county in which such person is to engage in the business of so making bonds, said bond to be conditioned to guarantee the payment of all sums of money that may be due to the State of Alabama or any political subdivision thereof by virtue of any judgment absolute being rendered against said person or persons as surety on said bond or bonds; but the court, magistrate, or officer, in taking bail, may allow more than two persons to justify severally as bail in amounts less than that expressed in the undertaking, provided the whole be equivalent to two sufficient bails; or the court, magistrate, or officer, in taking bail, in lieu of the foregoing, may allow a corporation, foreign or domestic, qualified to do a bonding business in this state, and authorized to execute the undertaking of bail, to execute such bail."

Section 201, as amended, *supra*, requires that the bond with a corporate surety in the amount of ten thousand dollars be approved by the probate judge of the county in which the individual is to engage in the business of making bonds.

My opinion is that both of your questions should be answered in the negative.

It is further my opinion that the revenue license may be issued to anyone applying therefor and paying the license fee. However, before the surety is approved as to qualifications on a bail bond compliance must be had with Title 15, Section 201, as amended, *supra*. No provision is made for posting a cash bond or individual bond by such licensee in lieu of bond with a corporate surety.

Very truly yours,

JOHN PATTERSON

Attorney General

December 1, 1958

Honorable Lester Wooten

Superintendent

Morgan County Schools

Decatur, Alabama

Schools - County Boards of Education - City Boards of Edu-

cation - Teachers - Opinions Overruled, Modified or Distinguished.

1. When a county board of education transfers a county school within a town which has been annexed to another city, the tenure teachers in said school do not lose their tenure status but the same is continued under the city school system under the provisions of Act No. 773, General and Local Acts 1953, page 1040.

2. Opinion reported in Quarterly Report of Attorney General, Vol. 69, page 76, distinguished.

Opinion by Assistant Attorney General Madison.

Dear Sir:

Your request for an official opinion bearing date of November 19, 1958, is as follows:

"About 1956, the town of Austinville held an election and voted to annex the town of Austinville to the city of Decatur. Since a county school was located in the town of Austinville, and served the town of Austinville and surrounding area, the County Board of Education has transferred the school property to the City Board of Education in Decatur. Next year the City Board of Education will operate this School, and there is a question as to tenure on the part of teachers at the Austinville School since it will become a part of the Decatur School System next year. We would like to have your opinion as to whether the teachers will remain on a tenure status in the county or their tenure will be transferred to the City Board of Education.

"We shall be grateful for your time and effort in rendering a decision that we may be governed in this situation by legal information."

Under the provisions of Title 52, Section 352, Code of Alabama 1940, as amended by Act No. 806, General and Local Acts 1951, page 1408, it was ruled by this office that tenure is acquired through service in a particular system and acquired tenure rights exist only in the system, county or city in which they were acquired. That is to say, such rights are not transferable from one system to another. Quarterly Report of Attorney General, Vol. 69, page 76. The facts in the above-cited opinion of this office are quite similar to those presented by you.

It is to be especially noted, however, that since the opinion reported in Volume 69, supra, said Section 352 has again been amended by Act No. 773, General and Local Acts 1953, page 1040, and now provides, in pertinent part, the following:

"Provided, that when two or more school systems are consolidated under one board of education, or when one or more schools are separated from a school system in order to become a part of or to constitute another school system, the continuing service status of the teachers involved in such changes is in no way jeopardized."

In view of the above-quoted amendment, the ruling reported in Volume 69, supra, is no longer applicable to cases arising since the amendment.

It is my opinion, from what has been said above, that it was the intention of the Legislature to make secure, as applicable here to the teachers who will now be in the city system and under the jurisdiction of the City Board of Education of Decatur, their continuing service status. In other words, they do not lose their continuing service status by being taken into the city school system, but their continuing service status continues as such in the said city system of Decatur.

Very truly yours,

JOHN PATTERSON

Attorney General

December 4, 1958

Honorable W. E. Farrar

Judge of Probate

Pickens County

Carrollton, Alabama

Judges of Probate - Compensation.

1. The term of office of the judge of probate begins on the third Tuesday in January next after his election.
2. The incumbent judge of probate is not entitled to compensation on the Tuesday the newly elected officer takes office.

Opinion by Assistant Attorney General Madison.

Dear Sir:

Your request for an official opinion bearing date of November 24, 1958, is as follows:

"On June 3rd., I was defeated for the Judge of Probate Office of Pickens County by R. B. Harris. The question has arisen regarding the hour I am to turn the office over to Mr. Harris. We understand the law says the third Tuesday in January, which will be Jan. 20th.

"The question is as follows:

" 'Am I entitled to whatever business we have during the day of Jan. 20th., or am I to turn the office over to Mr. Harris at 9:00 o'clock Wednesday morning?' "

The terms of office of Governor and other executive officers named in Section 116, Constitution of Alabama 1901, begin at the same time as that of the probate judges and circuit judges whose terms are fixed by Section 16, Title 41, Code of Alabama 1940. *State ex rel. Foster v. Rice*, 230 Ala. 608, 162 So. 292. Section 16, *supra*, provides as follows:

"The chief justice of the supreme court and associate justices of said court, the judges of the court of appeals, circuit judges, judges of probate courts, and clerks of the circuit court, and judges of inferior courts, when not otherwise provided for by law, shall hold their respective offices for the term of six years from the first Monday after the second Tuesday in January next after their election, and until their successors are elected and qualified." (Emphasis supplied)

The above section means that your term of office ends midnight Monday, January 19, 1959. The term of a duly qualified successor begins immediately after midnight and on January 20, 1959. *Oberhaus v. State, ex rel. McNamara*, 173 Ala. 483, 55 So. 898.

You are, therefore, not entitled to be paid for services performed on January 20, 1959. Biennial Report of Attorney General 1928-30, page 117.

Very truly yours,

JOHN PATTERSON

Attorney General

December 11, 1958

Honorable James T. Beeland
Probate Judge, Butler County
Greenville, Alabama

Taxation - Ad Valorem Taxes - Filing Tax -
Documentary Stamp Tax.

Provisions of Act No. 261, General Acts 1957, dealing with mineral documentary tax or transfer fee, discussed generally.

Opinion by Assistant Attorney General Livingston

Dear Sir:

Your request for an official opinion bearing date of November 17, 1958 is as follows:

"Re: Act of 1957, No. 261, House Bill No. 37

"Please advise me relative to the above act of the legislature on the following points:

"1. On an exchange of lands wherein each deed is for the same acreage and both deeds reserve all mineral interests in the lands conveyed, are documentary mineral tax stamps required on the two deeds?

"2. Would your answer to No. 1 above be different if each owner of mineral interests reserved assessed those mineral interests for ad valorem taxes and paid the taxes thereon?

"3. What stamps, if any, are required if, instead of reserving the minerals, the deed excepts the minerals reciting that the grantor did not own the mineral interests?

"4. If the mineral interests conveyed or reserved are partly located in more than one county, should the total stamps required be affixed on the filing for record in the first county or should the stamps be affixed on the filing of the deed in each county based on the acreage in each county?"

The following answers to your questions are based on the assumption that the deeds were executed after October 12, 1957, the effective date of Act No. 261, General Acts 1957, Volume 1, page 332.

The pertinent sections of Act No. 261, supra, are as follows:

"Section 2. There is hereby levied and shall be paid and collected as herein set forth a documentary or transfer tax (to be known as the mineral documentary tax) upon the filing and recording of every lease and other writing hereafter executed whereby there is created a leasehold interest in and to any non-producing oil, gas or other minerals in, on or under or that may be produced from any lands situated within the State of Alabama, or whereby any such interest is assigned or is extended beyond the primary term fixed by the original instrument, and upon every deed, instrument, transfer, evidence of sale or other writing whereby there is hereafter conveyed to a grantee or purchaser, or excepted or reserved to a grantor separately and apart from the surface any interest in or right to receive royalty from any non-producing oil gas or other minerals in, on or under or that may be produced from any lands within the State of Alabama. Provided the tax shall not apply to any mortgage or instrument creating a lien upon such interest, nor to the sale under foreclosure thereof." (emphasis added)

"Section 5. Such tax shall be paid by the purchase of documentary tax stamps from the probate judge of the county in which the land affected by the sale, lease or reservation or other instrument of such oil, gas or other minerals is situated, and the said judge shall cancel such stamps by stamping or writing the name of the county on the face thereof and affix same to the instrument when filed for recording and shall show upon the face or margin of the record thereof the amount of the said stamps so affixed by him." (emphasis added)

"Section 6. The mineral documentary tax levied above shall be in lieu of all ad valorem taxes and all non-producing leasehold interest upon all oil, gas and other minerals in, on or under lands lying within the State of Alabama, created or assigned after the effective date of this Act, and also all non-producing interests in such oil, gas and other minerals (including royalty interests therein) hereafter conveyed to a grantee or purchaser or excepted or reserved to a grantor separately and apart from the surface shall be exempt from all ad valorem taxes levied on or after October 1, 1957, by the State of Alabama, or any county, municipality, school district, or other taxing district within the State or becoming a lien on or after said date. Any sale for taxes of the surface or of the remainder of the fee shall not in any manner whatsoever affect the interest or interests hereby exempted." (emphasis added)

Based on the facts stated in Question 1 above, each deed reserves to the grantor therein separately and apart from the surface a mineral interest in, on or under the lands conveyed. Under the provisions of section 2, *supra*, it is my opinion that the mineral documentary tax is due on filing and recording of each deed.

Your second question is answered in the negative. Under section 2, *supra*, the mineral documentary tax must be paid upon the filing and

recording of each of the deeds mentioned even though the owners of the mineral interest desire to assess such interest, pay ad valorem tax thereon, and waive the exemption provided in section 6, *supra*.

From the facts stated in Question 3, the mineral interest could not have been "excepted or reserved to a grantor" (section 2, *supra*) by the deed in question since the grantor had no such interest to except or reserve to himself. Therefore, it is my opinion that no mineral documentary tax would be due upon the filing and recording of such instrument.

Section 5, *supra*, provides that the tax is paid by the purchase of the the documentary tax stamps from the probate judge of the county in which the land affected is situated. There appears to be no provision in Act No. 261 similar to that provision in Title 51, section 619(g), as amended, Code of Alabama 1940 (mortgage filing tax) whereby the probate judge of the county in which a mortgage is recorded collects all the tax due and then makes distribution on a proportionate basis to another county or counties in which part of the property described in the mortgage is situated.

In answer to your Question 4, therefore, it is my opinion that the stamps should be purchased from the respective probate judges when the deed is filed in each county, the tax to be computed on the basis of the number of mineral acres in each county.

Very truly yours,

JOHN PATTERSON

Attorney General

December 17, 1958

Hon. Arthur Joe Grant

Commissioner of Revenue

State of Alabama

Montgomery, Alabama

Taxation - Exemption - Revenue, Department of

Exemption from ad valorem tax granted under Title 51, Section 6, as amended, Code of Alabama 1940, remains in effect for period specified so long as the property covered by the exemption order continues to be used in and as a part of the plant or factory and so long as the plant or factory continues

to be operated for the purpose for which it was constructed.

Opinion by Assistant Attorney General Livingston.

Dear Sir:

Your request for an official opinion bearing date of December 4, 1958, is as follows:

"On July 18, 1958, the Department of Revenue under the authority of Title 51, Section 6, as amended, Code of Alabama 1940, granted an exemption from ad valorem taxes for state purposes for a period of 10 years to ORRadio Industries, Inc., Opelika, Alabama, said exemptions becoming effective October 1, 1958. The pertinent part of the order provides as follows:

" 'IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, by the State Department of Revenue, acting by and through the State Commissioner of Revenue, under authority of law quoted hereinabove, and subject to provisions and limitations thereof, that the factory or plant extensions, or additions, described in the foregoing petition of the ORRadio Industries, Inc., a corporation, an Alabama corporation, its successors and assigns, and the works, machinery and all other equipment constituting a part of, or used in connection with such extensions or additions, and any increase in capital stock for the purpose of making such extensions or additions, be and the same are hereby exempted from all ad valorem taxes for State purposes, for a period of ten (10) years, beginning October 1, 1958, and expiring September 30, 1968.'

"The corporation now proposes to sell the property covered by the exemption order to a finance company, title to said property to vest in the said finance company. Simultaneously with such sale, the parties propose to enter into a lease whereby ORRadio Industries, Inc., will lease back the property, the lease payments to total the cost of the property to the finance company, plus interest. A lease agreement similar to the one enclosed is to be used.

"The property covered by the exemption order will remain in the possession of ORRadio Industries, Inc., and the plant where such property is located and used will continue to be operated and used by ORRadio Industries, Inc., for the purposes for which the said plant, industry, or factory was constructed.

"Your official opinion is requested with respect to the following question: If the proposed sale and lease back arrangement is executed, will the exemption order issued by the Department of Revenue on July 18, 1958 remain in effect insofar as the property covered thereby is concerned?"

Title 51, Section 6, as amended, Code of Alabama 1940, provides, in part, as follows:

"§6. EXEMPTION OF OTHER FACTORIES, INDUSTRIES AND PLANTS FROM AD VALOREM TAXES. For the purpose of developing a market for Alabama pine and other trees and the products thereof, and of encouraging the construction, extension and operation of plants, industries and factories in the state of Alabama . . . for the manufacture, production or processing of any trade or commercial articles, materials or supplies whether or not such articles, materials or supplies are specifically named herein; . . . the department of revenue is hereby authorized and empowered to exempt from all ad valorem taxes for state purposes, and to remit any and all such taxes which are, or may be, assessed thereon, each such plant, industry and factory, and extension thereof or additions thereto, including the works, machinery and all other equipment constituting a part of, or used in connection with, any such plant, industry or factory, or extension thereof or addition thereto, for a period of not exceeding ten years from the date of completion of such plant, industry or factory, or extensions thereof, or additions thereto, but in no event the land on which such plant or factory shall be located . . ."

Title 51, Section 7, Code of Alabama 1940, provides, in part as follows:

"§7. APPLICATION FOR SUCH EXEMPTION. —In order to obtain the benefits of the exemption and remittance provided for in the preceding section, the person, firm or corporation owning or controlling, or proposing to own or control, any such factory or plant must make application in writing to the department of revenue . . . In all cases the application shall also state the location and a general description of the factory or plant, or extension thereof, or addition thereto, or the proposed factory, or plant, or the proposed extension thereof, or addition thereto, as the case may be, and pray for an order to be made by the department of revenue, granting such applicant, his, its or their successors and assigns, the exemption and remittance provided for in the preceding section . . ."

It is obvious that the primary object and purpose of the above provisions of law and the intent of the Legislature were to attract new industry to the State of Alabama and encourage expansions and additions thereto by authorizing the Department of Revenue to grant exemptions to qualified industries from ad valorem tax for state purposes for a period up to ten years from the date of completion of the plant, industry, or factory, or expansion or addition. While it is true that exemption statutes are to be strictly construed against the claimant thereof and in favor of the taxing authority, it is also true that a literal interpretation should not be adopted when it would defeat the purpose of a statute if any other reasonable construction can be given. *Touart v. American Cyanamid Company*, 250 Ala. 551, 35 So. 2d 484.

The exemption granted ORRadio Industries, Inc., by the Department of Revenue on July 18, 1958 exempted the property specified in the exemption order from ad valorem tax. In an opinion reported in Quarterly Report of the Attorney General, Volume 68, page 22, which deals with a county exemption from ad valorem tax under Title 51, Section 3, as amended, Code of Alabama, the following statement appears:

"It is the property which is exempt, not the owner of the plant, industry, or factory. Of course, it is the owner who derives the benefit from the exemption, but ad valorem taxation or the exemption therefrom follows the property regardless of the owner thereof. Taxes assessed against property create a personal liability of the owner and are a lien against the property duly assessed. *Wiggins Estate Co., Inc., et al v. Jeffery et al.*, 246 Ala. 183, 19 So. 2d 769. If the property is exempt from taxation, no personal liability arises nor is there a lien against such property."

Title 51, Section 8, Code of Alabama 1940, provides as follows:

"§8. WHEN SUCH EXEMPTION CEASES. — If at any time the operation of such plant or factory shall cease for a period of six consecutive calendar months, then and in that event, the exemption and remission so granted shall immediately cease and be of no further effect; provided, however, that should such operation be resumed at any time thereafter, the department of revenue, may in its discretion grant a new period of exemption and remission, but in no event shall the total period or periods of exemptions and remissions exceed ten years."

Section 8, *supra*, provides that the exemption ceases "If at any time the operation of such plant or factory should cease for a period of six consecutive calendar months." This seems to indicate that the exemption continues for the period granted so long as the plant or factory continues to be operated and used for the purpose of its construction even though, prior to the termination of the exemption period, title to the property covered by the exemption is transferred to a party other than the original operator of the plant, provided such property continues to constitute a part of and is used in connection with such plant or factory.

From the facts stated, it appears that the property specified in the exemption order will continue to be used in the plant or factory which will continue to be operated by ORRadio Industries, Inc., for the purpose for which it was originally constructed. Section 7, *supra*, states that the person, firm, or corporation owning or controlling the plant, or factory makes the application for the exemption praying for an order to be made by the Department of Revenue granting such applicant, his, its or their successors and assigns the exemption.

Considering the purpose and object of Section 6, *supra*, the pro-

visions of Section 7, *supra*, and the conditions under which an exemption ceases as stated in Section 8, *supra*, it is my opinion that the exemption granted on July 18, 1958 will not be affected by the sale and lease back arrangement referred to so long as the property covered by the exemption order continues to be used in and as a part of the plant or factory of ORRadio Industries, Inc., Opelika, Alabama, and so long as the plant of factory continues to be operated for the purpose for which it was constructed.

Very truly yours,

JOHN PATTERSON

Attorney General

December 29, 1958

Hon. Carl Booth

Circuit Solicitor

Thirteenth Judicial Circuit

Mobile, Alabama

Court Reporters - Habeas Corpus - Costs and Fees - Opinions
Overruled, Modified or Distinguished.

1. It is the duty of the court reporter to take notes in habeas corpus proceedings and to transcribe same when an appeal is taken.

2. When an appeal is taken by the State in habeas corpus proceedings the fees of the court reporter for transcribing the testimony should be taxed as costs and paid under the provisions of the General Appropriation Act (Act No. 626, General and Local Acts 1957, pages 897, 916, Section 2, Item F. Miscellaneous (5), if the State is unsuccessful.

Opinion by Assistant Attorney General Sykes.

Dear Sir:

You have inquired of this office as follows:

In the event that the State of Alabama takes an appeal in a habeas corpus proceeding, wherein the defendant is discharged in the circuit court and the testimony is transcribed by the court reporter and be-

comes a part of the record on appeal, from what source is the fee of the court reporter for transcribing the testimony paid?

It is my view that the fees of the court reporter for transcribing the testimony should be taxed as costs in the case and upon final determination of the case, and if the State is unsuccessful, should be paid under that provision of the current appropriation act (Act No. 626, General and Local Acts 1957, page 897) and from that appropriation in said act appearing on page 916 in Section 2, Item F. Miscellaneous (5), which provides as follows:

"(5) For court costs to be paid by the State of Alabama not otherwise provided for, estimated \$5,000.00."

Title 15, Section 369, Code of Alabama 1940, before amendment, provided that in appeals in habeas corpus cases:

". . . No bill of exceptions or assignments of error shall be necessary or required, but the clerk of the court from which such appeal is taken shall, within thirty days from the date of such judgment, forward a transcript of the record and certificate of appeal to the supreme court or court of appeals, together with a statement of the evidence and the judge's ruling thereon, all certified to be correct by the judge or other officer hearing the petition;"

It is to be noted that the court reporter is not referred to in this section of the 1940 Code. However, Title 15, Section 369, Code of Alabama 1940, as last amended by Act No. 60, General and Local Acts 1955, page 294, approved June 21, 1955, now provides in subsection (d) thereof as follows:

"No bill of exceptions or assignments of error shall be necessary or required. Within thirty days from the date of judgment, the clerk of the court from which the appeal is taken shall forward a transcript of the record and a certificate of appeal to the Supreme Court or Court of Appeals, together with a transcript of the evidence and the judge's ruling thereon, which shall be certified to be correct by the judge or officer hearing the petition. The transcript of the evidence shall be prepared by the court reporter, who shall be entitled to a transcription fee of fifteen cents for each one hundred words thereof, and for each carbon copy made at the same writing of five cents for each one hundred words thereof"

It is apparent, therefore, that the court reporter must now attend habeas corpus proceedings and upon an appeal being taken must transcribe the testimony, and further he is provided a fee for so transcribing.

This office has heretofore held that there is no authority to pay a court reporter for transcribing testimony on habeas corpus proceedings. Biennial Report of Attorney General 1928-1930, page 1025; Biennial Report

of Attorney General 1928-1930, page 710.

This office has further held that the court reporter's fees are not court costs because he can demand payment in advance before making his transcription. See Quarterly Report of Attorney General, Vol. 48, page 5; Vol. 46, page 158.

It is clear, however, that the fees of the court reporter for transcribing testimony may, and should be, taxed as part of the costs in the case when it is his duty and he undertakes to make notes at the hearing. *Ex parte Wright*, 229 Ala. 43, 155 So. 369, id., 228 Ala. 96, 151 So. 865; id., 226 Ala. 206, 146 So. 533.

It has also been held that the State is not required to give security for costs in an appeal in habeas corpus proceedings, that is to say, when the State takes the appeal. *State v. Davis*, 156 Ala. 181, 47 So. 182.

It is my view that it is the duty of the court reporter to take notes on habeas corpus proceedings and upon appeal being taken by the State to transcribe such notes which shall be included in the transcript of the evidence on appeal.

It is further my view that the fees provided for in Title 15, Section 369, as amended, *supra*, should be taxed as part of the costs in the case and should be paid by the State under that item of the General Appropriation Act above noted, provided the State is unsuccessful in the appeal.

Opinions of this office in conflict herewith are modified to conform to this opinion.

Very truly yours,

JOHN PATTERSON

Attorney General

December 31, 1958

Hon. Elmore McAdory

Clerk and Register

Circuit Court of Jefferson County

Bessemer Division

Bessemer, Alabama

Clerks of Circuit Courts - Costs and Fees - Trial Tax.

1. Clerks of circuit courts are entitled to receive a fee of ten dollars "for filing settlement under workmen's compensation act" under the provisions of Act No. 740, General and Local Acts 1957, page 1169, at the beginning of the term of new clerks.

2. The trial tax in the amount of three dollars provided for by Title 51, Section 20, Code of Alabama 1940, is not imposed and should not be collected in workmen's compensation cases settled by agreement of the parties without trial, even though said case is docketed.

Opinion by Assistant Attorney General Sykes.

Dear Sir:

Your request for an official opinion bearing date of December 8, 1958, is as follows:

"I respectfully request an official opinion on the following:

"Title 11, Section 21; Setting Up A New Schedule For Fees Allowed The Clerks of the Circuit Court.

"Clerks of the Circuit Court are entitled to receive the following fee for services indicated for filing Settlement Under Workmens Compensation Act — Ten Dollars (\$10.00).

"I would like to know if the State Tax is to be added to the Ten Dollars (\$10.00), or if the Ten Dollars (\$10.00) is all that is to be collected for such cases.

"This Act goes into effect January 19, 1959, and affects cases filed on or after such date."

In my opinion, the State trial tax provided for in Title 51, Section

20, Code of Alabama 1940, in the amount of three dollars should not be imposed, taxed or collected in workmen's compensation cases where such cases are settled by agreement of the parties without trial.

This office has heretofore held that the trial tax is not chargeable in workmen's compensation cases since the effective date of the 1940 Code and when such workmen's compensation cases are settled by agreement without a trial. This is true even though the case is docketed in order to get the approval of the judge for such settlement. See Quarterly Report of Attorney General, Vol. 31, page 97.

Act No. 740, General and Local Acts 1957, page 1169, amends Title 11, Section 21, Code of Alabama 1940, and provides a schedule of fees for clerks of circuit courts.

Among the fees therein provided for is a fee as follows:

"Clerks of the circuit courts are entitled to receive the following fees for the services indicated: . . . for filing settlement under workmen's compensation act, ten dollars; . . ."

It is my view that the fee of ten dollars provided for in Act No. 740, supra, is separate and apart from the requirement to pay trial tax under the provisions of Title 51, Section 20, Code of Alabama 1940.

The fee in the amount of ten dollars provided for in Act No. 740, supra, is a fee to which the clerk is entitled for filing a settlement and, of course, upon the effective date of Act No. 740, which will be at the beginning of the new term of circuit clerks, should be taxed and collected as costs in the case. In such cases the trial tax in the amount of three dollars does not accrue, if the settlement is effected by the agreement of the parties and no trial is had.

Very truly yours,

JOHN PATTERSON

Attorney General

INDEX

QUARTERLY REPORT OF THE ATTORNEY GENERAL FOR THE
PERIOD FROM OCTOBER 1, 1958 THROUGH DECEMBER 31, 1958

VOLUME 93

—A—

ACTS (GENERAL AND LOCAL):

GENERAL ACTS OF 1939

Page 1064 26

GENERAL AND LOCAL ACTS 1953

Page 1040 37

GENERAL AND LOCAL ACTS 1957

Page 332 41

Page 688 19

AD VALOREM TAXES:

Documentary stamp tax—general treatment 41

Exemption for factories not available to uniform supply company 22

ARMORY COMMISSION:

May pay municipal improvement assessments 31

ASSESSMENTS:

Municipal improvement—may be paid by Armory Commission 31

—B—

BAIL:

License for making bonds—necessity for licensee to furnish bond

with corporate surety 35

BONDS:

License to make bail bonds—necessity for licensee to furnish bond with corporate surety	35
--	----

—C—**CITY BOARDS OF EDUCATION:**

Teacher tenure—effect of transferring school to city system	37
---	----

CLAIMS:

Of State Highway Department against closed corporations— effect of claim of officer and incorporators against said Department	11
---	----

CLERKS OF CIRCUIT COURTS:

Fee for filing settlements under Workmans Compensation Act— trial tax in same cases	50
--	----

CODE OF ALABAMA 1940:

Title 10	
Section 28	11
Title 11	
Section 21, as amended	50
Title 12	
Section 12 (22), as amended	33
Title 15	
Section 201, as amended	35
Section 369, as amended	47
Title 36	
Section 70, as amended	25
Title 51	
Section 3, as amended	22
Section 6, as amended	43

Section 6, as amended	7
-----------------------------	---

Section 477	35
-------------------	----

Section 812 (4), as amended	9
-----------------------------------	---

COMPENSATION:

Judge of Probate—incumbent not paid on day new officer takes over	39
--	----

CONTRACTS:

With individual and corporation in which he is officer by Highway Department—effect of one upon the other	11
--	----

CORPORATIONS:

Contract with Highway Department—unaffected by contract of said Department with officer as individual	11
--	----

COSTS AND FEES:

Circuit clerks fee for filing settlements under Workmans Compensation Act—trial tax in same cases	50
Habeas Corpus proceedings transcript of testimony— compensation of court reporter	47

COUNTIES:

Maintenance of river channels by	33
Taxes levied under Section 215, Constitution of 1901—use of	14

COUNTY BOARDS OF EDUCATION:

Teacher tenure—effect of transferring of school to city system	37
--	----

COURTHOUSES:

County tax levied under Section 215, Constitution of 1901—use for construction of	14
--	----

COURT REPORTERS:

Duties and compensation in habeas corpus proceedings	47
--	----

—D—

DOCUMENTARY STAMP TAX:

General treatment	41
-------------------------	----

DRIVER'S LICENSE:

Revocation—cause for extending period	25
---	----

—E—

EXEMPTIONS:

Ad valorem taxes—for factories may extend to building purchased by new industry	7
Factory ad valorem tax—not available to uniform supply company	22
Factory ad valorem tax—period of effectiveness	43

—F—

FILING TAX:

Documentary stamp tax—general treatment	41
---	----

FUNDS:

County General Fund and Public Highway and Traffic Fund— effect of placing Probate Judge on salary	19
Use of proceeds of tax levied under Section 215, Constitution of 1901	14

—H—

HABEAS CORPUS:

Transcript of testimony—compensation of court reporter for	47
--	----

HIGHWAYS AND HIGHWAY DEPARTMENT:

Contract with corporation uneffected by contract with officer of corporation as individual	11
---	----

Effect of changing Probate Judge from fee to salary—on	
Public Highway and Traffic Fund	19

HIGHWAY PATROL:

Driver's licenses—cause for extending revocation period	25
---	----

—I—

INSURANCE:

Premium tax—effect of returned reinsurance premiums on	9
--	---

—J—

JACKSON COUNTY:

Maintenance of Paint Rock River Channel	33
Use of taxes levied under Section 215, Constitution of 1901	14

JUDGES OF PROBATE:

Changed to salary basis—effect on County General Fund and Public Highway and Traffic Fund	19
Date term begins	39

—L—

LICENSES:

Bail bond business—necessity of licensee furnishing bond with corporate surety	35
---	----

—M—

MADISON COUNTY:

Probate Judge placed on salary, effect on county funds	19
--	----

MILEAGE:

Tax—interstate motor coal carrier not subject to	26
--	----

MOTOR CARRIERS:

Mileage tax—interstate coal carrier not subject to26

MUNICIPALITIES:

Improvement assessments may be paid by Armory Commission31

—O—

OPINIONS OVERRULED, MODIFIED OR DISTINGUISHED:**BIENNIAL REPORT 1928-1930**

Page 71047

Page 102547

VOLUME 46

Page 15847

VOLUME 48

Page 547

VOLUME 69

Page 7637

—P—

PUBLIC SAFETY DEPARTMENT:

Drivers licenses—cause for extending revocation period25

—R—

REVENUE, DEPARTMENT OF:

Ad valorem tax exemption for factories may extend to
building purchased by new industry 7

Factory ad valorem tax exemption—period of effectiveness43

Mileage tax—interstate coal carrier not subject to26

—S—

SCHOOLS:

Teacher tenure—effect of transferring school from county to city system	37
--	----

SURETIES:

License for making bail bonds—necessity of licensee furnishing bond with corporate surety	35
--	----

—T—

TAXATION:

Documentary stamp tax—general treatment	41
Exemption—for factories may extend to building purchased by new industry	7
Factory ad valorem exemption—period of effectiveness	43
Factory ad valorem tax exemption—not available to uniform and towel supply	22
Insurance premium tax—effect of returned reinsurance premiums	9
Mileage tax—interstate coal carrier not subject to	26

TEACHERS:

Tenure—effect of transferring school from county to city system	37
--	----

TRIAL TAX:

None imposed in Workman's Compensation Act cases settled by agreement	50
--	----

—W—

WORDS AND PHRASES:

"Certificate or permit" as used in Motor Carrier Act	26
"Premiums" as used in computing tax thereon	9
"The manufacture, production or processing of any trade or commercial articles, materials, or supplies"	22

WORKMAN'S COMPENSATION:

Circuit Clerk's filing fee in cases settled by agreement— trial tax in same cases	50
--	----